

1 Gary M. Anderson (State Bar No. 97385)
Michael J. Moffatt (State Bar No. 180343)
2 Jessica Brookhart-Knost (State Bar No. 246244)
FULWIDER PATTON LLP
3 Howard Hughes Center
6060 Center Drive, Tenth Floor
4 Los Angeles, California 90045
Telephone: (310) 824-5555
5 Facsimile: (310) 824-9696
lidocketla@fulpat.com

6 Attorneys for Plaintiff

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 D&D GROUP PTY LTD, an Australian
12 corporation, D & D TECHNOLOGIES
PTY LTD, an Australian corporation
13 and D & D TECHNOLOGIES (USA),
INC. a California corporation,

14 Plaintiff,

15 v.

16 Nationwide Industries, Inc., a Florida
17 corporation,

18 Defendant.

19 And Related Counterclaims

CASE NO. 08CV-0236 WQH POR

Assigned to The Hon. William Q.
Hayes

Complaint Filed: February 6, 2008

Plaintiff and Counterdefendant D&D
Technologies (USA), Inc.'s Reply to
Defendant's Counterclaims and Jury
Demand

20 Plaintiff and Counterdefendant D&D Technologies (USA), Inc. (hereinafter
21 "D&D Technologies (USA) " or "Counterdefendant"), by and through its
22 undersigned counsel, as and for its Reply in response to the Counterclaims asserted
23 against it by Defendant and Counterclaimant Nationwide Industries, Inc.
24 (hereinafter "Nationwide" or "Counterclaimant") in the above-captioned action,
25 responds as follows:

26 **I. COUNTERCLAIMS**

27 1. Upon information and belief, D&D Technologies (USA) admits the
28

1 allegations contained in Paragraph 26 of the Counterclaims.

2 2. D&D Technologies (USA) admits the allegations contained in
3 Paragraphs 27-30 of the Counterclaims.

4 **FIRST COUNTERCLAIM: DECLARATORY JUDGMENT OF**
5 **PATENT INVALIDITY AND NON-INFRINGEMENT**
6

7 3. In response to Paragraph 31 of the Counterclaims, D&D Technologies
8 (USA) repeats and realleges each and every averment contained in its Complaint
9 and repeats and realleges each an every response as set forth in Paragraphs 1
10 through 2 of D&D Technologies (USA's) Reply to the Counterclaims as set forth
11 herein.

12 4. In response to Paragraph 32 of the Counterclaims, D&D Technologies
13 (USA) admits that Nationwide claims it has stated a claim for Declaratory Judgment
14 that arises under the Patent Laws of the United States. D&D Technologies (USA)
15 denies each and every remaining allegation as set forth in Paragraph 32 of
16 Defendant's Counterclaims.

17 5. D&D Technologies (USA) admits the allegations contained in
18 Paragraphs 33-35 of the Counterclaims.

19 6. In response to Paragraph 36 of the Counterclaims, D&D Technologies
20 (USA) admits the allegations contained in Paragraph 36 of the Counterclaims.

21 7. D&D Technologies (USA) denies each and every allegation set forth in
22 Paragraphs 37 and 38 of the Counterclaims.

23 **SECOND COUNTERCLAIM: UNFAIR COMPETITION AND**
24 **FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)(1)(B)**
25

26 8. In response to Paragraph 39 of the Counterclaims, D&D Technologies
27 (USA) repeats and realleges each and every averment contained in its Complaint
28 and repeats and realleges each an every response as set forth in Paragraphs 1

1 through 7 of D&D Technologies (USA's) Reply to the Counterclaims as set forth
2 herein.

3 9. In response to Paragraph 40 of the Counterclaims, D&D Technologies
4 (USA) admits that Nationwide claims to have stated a claim for unfair competition
5 and false advertising, which arise under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*
6 D&D Technologies (USA) denies each and every remaining allegation as set forth
7 in Paragraph 40 of the Counterclaims.

8 10. D&D Technologies (USA) admits the allegations contained in
9 Paragraphs 41-42 of the Counterclaims.

10 11. In response to Paragraph 43 of the Counterclaims, D&D Technologies
11 (USA) admits that Nationwide has attached Exhibits 1, 2, 3, 4, and 5 to the
12 Counterclaims, which purport to be advertising and promotional materials. D&D
13 Technologies (USA) denies each and every remaining allegation of Paragraph 43 of
14 the Counterclaims.

15 12. D&D Technologies (USA) denies each and every allegation set forth in
16 Paragraphs 44, 45, 46, 47, 48, 49 and 50 of the Counterclaims.

17 **THIRD COUNTERCLAIM:**

18 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**

19 13. In response to Paragraph 51 of the Counterclaims, D&D Technologies
20 (USA) repeats and realleges each and every averment contained in its Complaint
21 and repeats and realleges each and every response as set forth in Paragraphs 1
22 through 12 of D&D Technologies (USA's) Reply to the Counterclaims as set forth
23 herein.

24 14. In response to Paragraph 52 of the Counterclaims, D&D Technologies
25 (USA) admits that Nationwide claims to have stated a claim for unfair competition
26 under the California Business and Professions Code § 17200. D&D Technologies
27 (USA) denies each and every remaining allegation set forth in Paragraph 52 of the
28 Counterclaims.

1 15. D&D Technologies (USA) admits the allegations contained in
2 Paragraphs 53-54 of the Counterclaims.

3 16. D&D Technologies (USA) denies each and every allegation made
4 against Plaintiff D&D Technologies (USA) in Paragraphs 55-56.

5 **FOURTH COUNTERCLAIM:**

6 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500 et seq.**

7 17. In response to Paragraph 57 of the Counterclaims, D&D Technologies
8 (USA) repeats and realleges each and every averment contained in its Complaint
9 and repeats and realleges each an every response as set forth in Paragraphs 1
10 through 16 of D&D Technologies (USA's) Reply to the Counterclaims as set forth
11 herein.

12 18. In response to Paragraph 58 of the Counterclaims, D&D Technologies
13 (USA) admits that Nationwide claims it has stated a claim for false advertising
14 under the California Business and Professions Code § 17500 and 17508(a). D&D
15 Technologies (USA) denies each and every remaining allegation as set forth in
16 Paragraph 58 of Nationwide's Counterclaims.

17 19. D&D Technologies (USA) admits the allegations contained in
18 Paragraphs 59-60 of the Counterclaims.

19 20. D&D Technologies (USA) denies each and every allegation made
20 against D&D Technologies (USA) in Paragraph 61 of the Counterclaims.

21 **FIFTH COUNTERCLAIM: TRADE LIBEL**

22 21. In response to Paragraph 62 of the Counterclaims, D&D Technologies
23 (USA) repeats and realleges each and every averment contained in its Complaint
24 and repeats and realleges each an every response as set forth in Paragraphs 1
25 through 20 of D&D Technologies (USA's) Reply to the Counterclaims as set forth
26 herein.

27 22. In response to Paragraph 63 of the Counterclaims, D&D Technologies
28 (USA) admits that Nationwide claims it has stated a claim for the common law tort

1 of trade libel. D&D Technologies (USA) denies each and every remaining
2 allegation as set forth in Paragraph 63 of the Counterclaims.

3 23. D&D Technologies (USA) admits the allegations contained in
4 Paragraphs 64-65 of the Counterclaims.

5 24. D&D Technologies (USA) denies each and every allegation made
6 against D&D Technologies (USA) in Paragraphs 66-68 of the Counterclaims.

7 25. To the extent that an allegation or legal conclusion in Nationwide's
8 Counterclaims was not specifically admitted or denied, D&D Technologies (USA)
9 hereby denies such allegations and legal conclusions.

10 **II. AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 26. Nationwide Counterclaims fail to state any claims against D&D
13 Technologies (USA) on which relief may be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 27. The '100 patent is not invalid or unenforceable under any of the U.S.
16 Patent laws.

17 **THIRD AFFIRMATIVE DEFENSE**

18 28. Defendant's Second, Third, Fourth, and Fifth Counterclaims fail
19 because said advertisements are truthful.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 29. Defendant's Second, Third, Fourth, and Fifth Counterclaims fail
22 because said advertisements contain lawful puffery.

23 24 **III. PRAYER FOR RELIEF**

25 WHEREFORE, given the aforementioned response to Nationwide's
26 Counterclaims, D&D Technologies (USA) respectfully requests that this Court grant
27 D&D Technologies (USA) the following relief:
28

- 1 A. That Nationwide's Counterclaims be dismissed with prejudice;
- 2 B. That judgment be entered against Nationwide on all claims and
- 3 causes of action at issue in the Nationwide's Counterclaims;
- 4 C. That Nationwide be denied its Prayer for dismissal of Plaintiff's
- 5 Complaint;
- 6 D. That Plaintiff's U.S. Patent No. 5,584,100 be found valid and
- 7 enforceable;
- 8 E. That Nationwide be found to have infringed U.S. Patent No.
- 9 5,584,100;
- 10 F. That this case be found not to be exceptional with respect to
- 11 Nationwide's Counterclaims and Prayer for Relief;
- 12 G. That Nationwide be denied all injunctive and monetary relief,
- 13 including its requests for attorneys' fees, expenses and costs, by
- 14 way of its Prayers for Relief in the Counterclaims;
- 15 H. That D&D Technologies (USA) be awarded damages pursuant to
- 16 35 U.S.C. §284;
- 17 I. That Nationwide be preliminarily and permanently enjoined
- 18 from infringing U.S. Patent No. 5,584,100;
- 19 J. That D&D Technologies (USA) be awarded its attorneys' fees
- 20 pursuant to 35 U.S.C. §285, along with an award of costs
- 21 incurred by D&D Group in defense of the Counterclaims;
- 22 K. That Nationwide take nothing by way of its Prayers for Relief;
- 23 and

24 ///

25 ///

26 ///

27 ///

28 ///

1 L. That the Court award any other relief to which D&D
2 Technologies (USA) may be entitled.

3
4 Respectfully submitted,

5 FULWIDER PATTON, LLP

6
7 Dated: May 19, 2008

By: /s/Gary M. Anderson

Gary M. Anderson

8 Michael J. Moffatt

9 Jessica Brookhart-Knost

Attorneys for Plaintiffs

10 D&D GROUP PTY LTD, D&D

11 TECHNOLOGIES PTY LTD. AND D&D

12 TECHNOLOGIES (USA), INC.

JURY DEMAND

D&D Technologies (USA) hereby requests a trial by jury on all issues so triable raised by Nationwide's Counterclaims in this action.

Respectfully submitted,

FULWIDER PATTON, LLP

Dated: May 19, 2008

By: /s/Gary M. Anderson

Gary M. Anderson

Michael J. Moffatt

Jessica Brookhart-Knost

Attorneys for Plaintiffs

D&D GROUP PTY LTD, D&D

TECHNOLOGIES PTY LTD. AND D&D

TECHNOLOGIES (USA), INC.

56688.1

CERTIFICATE OF SERVICE

I certify that on **May 19, 2008**, the foregoing **PLAINTIFF AND COUNTERDEFENDANT D&D TECHNOLOGIES (USA), INC.'S REPLY TO DEFENDANT'S COUNTERCLAIMS AND JURY DEMAND** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participant(s) e-mail address(es) denoted on the attached Electronic Mail Notice List. For Parties who are not Filing Users, I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participant(s), if any, indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **May 19, 2008**.



Carrie Rose

Mailing Information for a Case 3:08-cv-00236-WQH-POR

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Gary M Anderson**
ganderson@fulpat.com,LitDocketLA@fulpat.com
- **George R. McGuire**
gm McGuire@bsk.com,jcalaprico@bsk.com
- **James Sullivan McNeill**
jmcneill@mckennalong.com,lvaldez@mckennalong.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

David L. Nocilly
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202-1355